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SUPREME COURT, U.S.

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1975

NO. 75-5831

ARNOLD EUGENE WILLIAMS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

The Petitioner, ARNOLD EUGENE WILLIAMS, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Fifth Circuit, entered October 30, 1975.

OPINION BELOW

The Court of Appeals entered its opinion on October 30, 1975. A copy of the opinion affirming the judgment of conviction is attached as Appendix A.

JURISDICTION

Jurisdiction of this Court is invoked under Title 28, United States Code, Section 1254(1).

QUESTION PRESENTED FOR REVIEW

Whether waiting sixteen months to hold a hearing on whether to revoke probation, though Petitioner was available to be tried, constituted a denial to Petitioner of his statutory and constitutional right to a speedy trial warranting dismissal of the motion to revoke probation.

CONSTITUTIONAL AND STATUTORY PROVISIONS

I. 18 U.S.C. §3653 states, in part: "As speedily as possible after arrest the probationer shall be taken before the court for the district having jurisdiction over him. Thereupon the court may revoke the probation and require him to serve the sentence imposed, or any lesser sentence, and, if imposition of sentence was suspended, may impose any sentence which might originally have been imposed."

II. The Sixth Amendment to the United States Constitution provides that "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial...."

STATEMENT OF THE CASE

On June 18, 1973, Petitioner was convicted for the offense of Unlawful Possession With the Intent to Distribute a Quantity of Robitussin Cough Syrup, in violation of 21 U.S.C. §841(a)(1), in the United States District Court for the Southern District of Texas, Laredo Division. He was sentenced to a thirty-six month sentence, thirty-three months of which was suspended with a special parole term of two years. A Motion to Revoke Probation was filed on January 21, 1974 (during the term of the probation). On February 5, 1974, an order for the issuance of a probation warrant was filed and entered. The Motion to Revoke Probation alleged that Petitioner violated the terms of his probation by leaving the Western District of Texas without permission and by committing three offenses of robbery in Houston, Texas.

It was not until April 25, 1975, that a hearing on the Motion to Revoke Probation was held in the United States District Court for the Southern District of Texas, Laredo Division. On April 30, 1975, the District Court entered a Memorandum and Order setting aside the suspension of the thirty-three months remaining of the original sentence and ordering the sentence into execution.

Petitioner had been arrested and placed in state custody on December 27, 1973, and remained in custody until the hearing date sixteen months later. The Motion to Revoke Probation in federal court was filed within a month of the arrest date, but the District Court did not hold a hearing immediately because of the desire to await the outcome of the state charges. One of the three state robbery charges was dismissed soon after Petitioner's arrest; Petitioner was acquitted on another of the charges; and he was convicted of the third robbery on March 28, 1974. He placed his state conviction on appeal, and the appeal was still pending a year later when the District Court held the hearing on the Motion to Revoke Probation.

BASIS OF FEDERAL JURISDICTION IN THE UNITED STATES DISTRICT COURT

This was a motion instituted by the Government seeking to revoke probation granted Petitioner following his conviction under 21 U.S.C. §841(a)(1).

REASONS FOR GRANTING THE WRIT

Petitioner contends that the Court of Appeals for the Fifth Circuit has decided an important question of federal law which should be settled by this Court.

The Court of Appeals for the Fifth Circuit summarily overruled Petitioner's contention that the delay of sixteen months from date of arrest to date of hearing was unreasonable. The Court held that the probation was revoked within the probationary period and the delay was not unreasonable "under the circumstances." The "circumstances" apparently pertained to the fact that the District Court was awaiting the outcome of the state robbery cases, but there was a delay of over one year after the state

conviction, and the status of the state case did not change in the intervening period. The appeal from the state case was still pending at the time of the federal hearing.

Applying the criteria set forth in Barker v. Wingo, 407 U.S. 514 (1972), Petitioner was denied his right to a speedy disposition of the Motion to Revoke Probation. 1) Length of delay: Sixteen months of continuous custody is not "as speedily as possible after arrest" under the dictate of 18 U.S.C. §3653. 2) Reason for delay: There was no need to await the outcome of the state proceedings, and, at any rate, the District Court failed to await the final outcome of the state proceedings. 3) Assertion of speedy trial right: Petitioner filed a Motion to Dismiss prior to the federal hearing, contending he was denied his right to a speedy trial, and this Motion was filed three weeks from the date that Petitioner was appointed counsel in the federal case. 4) Prejudice caused by the delay: Prejudice is obvious if witnesses die or disappear, and it was proved at the hearing that two material fact witnesses for the Petitioner became unavailable during the sixteen-month period of delay (one died and one disappeared).

Petitioner demonstrated substantial prejudice in the failure of the District Court to grant him a speedy hearing, and in light of the policies which underline the right to a speedy trial, dismissal is the only possible remedy. Strunk v. United States, 412 U.S. 434 (1973).

CONCLUSION

For the reasons stated, the Supreme Court should reverse the conviction of the Petitioner and direct that the Motion to Revoke Probation be dismissed.

Respectfully submitted,

ROLAND E. DAHLIN, II
Federal Public Defender

BY

William W. Burge

WILLIAM W. BURGE
First Assistant
Federal Public Defender
Attorney for Petitioner
Post Office Box 61508
Houston, Texas 77208
Telephone: 527-5901